



Crl.A.No.413 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2024

PRONOUNCED ON : 05.02.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

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Surendhiran

...Appellant/Accused

Vs.

The State rep by:
The Inspector of Police,
Bargur Police Station,
Krishnagiri District.
Crime No.282/2018

...Respondent/Prosecuting Complainant

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, 1973, to call for the records and to set aside the Judgment in S.C.No.37 of 2019 passed by the learned Sessions, Judge, Fast Track Mahila Court, Krishnagiri, dated 06.08.2021 and acquit the appellant/accused.



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For Appellant : Mr.V.Perarasu
(Amicus Curiae)

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

JUDGMENT

(Order of the Court was delivered by SUNDER MOHAN,J.)

This Criminal Appeal has been filed by the accused, challenging the conviction and sentence imposed upon him vide judgment dated 06.08.2021 in S.C.No.37 of 2019 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

2(i) It is the case of the prosecution that the deceased was the mother of the accused; that the husband of the deceased owned certain lands in Thellabenda village; that there was a litigation initiated by third parties claiming right over the said property after the death of the husband of the deceased; that the litigation ended successfully in favour of the deceased; that the deceased and the accused were not in cordial terms; that the accused came to know that the deceased intended to sell the land to one Tr.Vijayan [P.W.9] who was looking after the deceased; that enraged by that when the deceased along with the



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Revenue Officials and the said Tr.Vijayan [P.W.9] went to the land for measurement on 24.07.2018 at about 10.45 a.m., the accused attacked the deceased with the bill hook (koduval) on her right shoulder, right side neck and her back, as a result of which the deceased died at the scene of the occurrence.

(ii) It is further the case of prosecution that since the accused threatened all the persons who were in the scene of the occurrence, including the Revenue Officials and P.W.9, all of them ran away from the scene of occurrence.

(iii) It is further the case of prosecution that P.W.9 informed P.W.1 [daughter of the deceased and sister of the accused] about the occurrence, and P.W.1, who was residing in some other village, came to the village where the occurrence took place and lodged a complaint [Ex.P1]; P.W.20, the Sub Inspector of Police, registered the FIR [Ex.P9] for the offences under Sections 302 and 506 (ii) of the IPC against the accused.



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(iv) P.W.21 took up the investigation and went to the scene of the occurrence at 5.30 p.m. In the meantime, the body of the deceased was taken in a private ambulance to the Government Head Quarters Hospital, Krishnagiri, where the deceased was declared dead. P.W.21, Inspector of Police, prepared Observation Mahazar [Ex.P3] and Rough Sketch [Ex.P10]. He seized the blood stained earth and the earth that was not blood-stained under Seizure Mahazar [Ex.P2] in the presence of P.W.11 and P.W.12. On 25.07.2018 at about 6.15 a.m., he went to the Hospital, conducted Inquest and prepared an Inquest Report [Ex.P11] in the presence of witnesses. Thereafter, he sent the body of the deceased for conducting post-mortem through P.W.15/Constable, to the Government Hospital. The post-mortem was conducted by P.W.13 who issued the post-mortem certificate [Ex.P.6].

(v) On the same day, at about 1.00 p.m., P.W.21 arrested the accused in the presence of the Village Administrative Officer [P.W.16] and his assistant/ Mr.Palani and on the basis of the admissible portion confession given by the accused, which was marked as Ex.P7, P.W.21 seized the blood-stained bill hook and blood-stained clothes of the accused from his house. Thereafter, he sent the



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blood stained articles for chemical analysis, and after the examination of all other witnesses, he filed the Final Report before the learned Judicial Magistrate No.I, Krishnagiri, on 20.09.2019 for the offences under Sections 302 and 506 (ii) of the IPC.

(vi) On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with, and the case was committed to the Court of Session in S.C.No.37 of 2019 and was made over to the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, for trial. The trial Court framed charges under Sections 302 and 506 (ii) of the IPC as against the appellant, and when questioned, the appellant pleaded 'not guilty'.

(vii) To prove the case, the prosecution examined 21 witnesses and marked 17 exhibits and 10 material objects. When the appellant was questioned u/s.313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. Though no witness was examined on the side of the appellant, three documents were marked as Exs.D1 to D3.



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(viii) The Trial Court, on appreciation and evaluation of oral and documentary evidence, convicted the accused viz., the appellant, and sentenced him as follows:

Offences under Section	Sentence imposed
302 of the IPC	To undergo life imprisonment and to pay a fine of Rs.2000/- in default to undergo RI for one year.
560 (ii) of the IPC	To undergo RI for one year and to pay a fine of Rs.1000/- in default to undergo RI for six months.
The sentences imposed were directed to run concurrently.	

Hence, the accused has preferred the appeal challenging the above conviction and sentence.

3. The accused had originally filed an appeal through counsel. On 19.07.2023, a learned counsel representing the counsel on record represented before this Court that the counsel on record had handed over the case papers to the appellant. Therefore, by the order dated 18.10.2023, this Court had directed the Registry to send notice to the appellant. It is seen from the records that notice was received by the appellant, who is right now confined in the Central Prison Vellore on 27.11.2023, but he had not chosen to engage any counsel. Therefore, this Court appointed Mr.V.Perarasu, as Legal Aid Counsel on



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13.12.2023 to appear on behalf of the appellant.

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4(i). Mr.V.Perarasu, the learned counsel for the appellant submitted that the prosecution had not examined any independent eye-witness to prove its case, though it is the admitted case that several independent persons witnessed the occurrence; that though the Revenue Officials and other eye-witnesses examined by the prosecution had allegedly witnessed the occurrence, none of them had given a complaint; and that the prosecution case that the Police came to know of the occurrence only after P.W.1 gave a complaint at 4.00 p.m. is highly improbable as the Village Administrative Officer and other Revenue Officials ought to have informed the Police about the occurrence.

(ii). The learned counsel further submitted that the defence had marked two documents to show that the deceased had already sold the property to a third party; therefore, the motive alleged by the prosecution that the accused apprehended that the deceased would give the property to P.W.9 and hence caused her death is improbable. That apart, since the deceased had already sold the property, there was no necessity for her to measure the property, and



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therefore, the prosecution case that the occurrence took place on the land in the presence of Revenue Officials who came there to measure the property cannot be believed.

5. Mr.E.Raj Thilak, the learned Additional Public Prosecutor, *per contra*, submitted that P.W.4/the Village Administrative Officer, P.W.5/the Surveyor, and P.W.12/the Village Assistant have all witnessed the occurrence and supported the prosecution case; that none of these Revenue Officials had any motive to falsely implicate the appellant; that apart, P.W.9, another eye witness also supported the prosecution case; that nothing has been elicited in the cross-examination to disbelieve their version. The learned Additional Public Prosecutor, therefore, submitted that the Judgment of the Trial Court is in accordance with law and need not be interfered with.

6. We have carefully considered the rival submissions and perused the evidence on record.

7. P.W.1 is the daughter of the deceased and sister of the accused.



She had lodged a complaint [Ex.P1] on the information given by P.W.9. P.W.2 and P.W.3, who were examined by the prosecution as eye witnesses and close relatives of the deceased and the accused turned hostile. P.W.4 is the Village Administrative Officer who went along with P.W.5 and P.W.12 to measure the land at the instance of the deceased on 24.07.2018 at about 10.30 a.m. P.W.6 is the grand-son of the deceased and son of P.W.1. P.W.7 is the husband of P.W.1, who came to know of the occurrence later. P.W.8 is another eye witness who turned hostile. P.W.9 is a person who was taking care of the deceased and was acquainted with the property affairs of the deceased. He was an eye witness to the occurrence and supported the prosecution case. P.W.10 turned hostile. P.W.11 is the Seizure Mahazar witness. As stated earlier, P.W.12 is an eye witness to the occurrence.

8. P.W.13 is the Post-mortem Doctor P.W.14 is the Constable who handed over the FIR to the Court. P.W.15 is the Corpse Constable. P.W.16 is the Village Administrative Officer, who witnessed the seizure of material objects on the confession of the accused. P.W.17 and P.W.18 are hearsay witnesses. P.W.19 is a photographer who took pictures at the scene of occurrence and the



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dead body of the deceased. P.W.20 is the Sub Inspector of Police, who registered the First Information Report. P.W.20 is the Investigating Officer as stated earlier.

9. P.W.13 – the Post-mortem Doctor who issued the post-mortem certificate [Ex.P6] had opined that the deceased died due to the shock and hemorrhage and noted the following external injuries:

External Injuries: *Cut injury right side neck 15* 58 bone depth all muscle and major vessels exposed and cut edges sharp age 26 – 28 hrs.*

Back of neck 2 cut injury

1. *10*2*bone depth*
2. *15*5* bone depth*
3. *Right Shoulder abrasion injury 10*10* cm muscle exposed.*

Thus, the prosecution has established that the deceased died due to homicidal violence and there is no dispute with regard to the said fact.

10. The motive alleged by the prosecution is that the accused came to



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know that the deceased intended to transfer her property to P.W.9 and in order to prevent the same, he caused the death of deceased when she went to the land to measure it in the presence of the Revenue Officials and P.W.9.

11. P.W.4/ the Village Administrative Officer, had stated in his deposition that he went to the land belonging to the deceased. The deceased had made a representation to the Collector to measure the land. P.W.4 went along with P.W.5/the Surveyor, and the Village Assistant [P.W.12]. P.W.4 has further stated that when P.W.4, P.W.5 and P.W.12 were engaged in a conversation, they saw the accused cutting the deceased with the bill hook. P.W.5's evidence is also similar, and P.W.12/the assistant, another eye witness, corroborates the evidence of P.W.4 and P.W.5. The version of these witnesses was attacked by the defence mainly on the ground that they could not have gone to the property for measurement as the deceased had sold the land in March 2018 and the Patta was also transferred in May 2018 in favour of the purchaser by the name Mr.Vishwanathan. However, we find from the evidence of P.W.4 that he went to the land only because the deceased had made a request to the Collector on the grievance redressal day and that he was not aware of the transfer made to a third



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party by the deceased. Thus, the witnesses have explained as to why they were present on the land for measurement. P.W.9 is another witness who, according to the defence was benefited by the deceased, and he was aware of the sale transaction made in favour of one Vishwanathan. Though P.W.9 had admitted that he was aware of the sale transaction and that he had not informed the children of the deceased about the sale transaction, we are of the view that conduct at best would show that P.W.9 had gained out of the transaction. However, the suggestion and cross-examination do not lead to any other inference or suggest that P.W.9's version with regard to his witnessing the occurrence is false. P.W.1 is the sister of the accused and the daughter of the deceased. She stuck to her version made in the complaint, when she deposed in before the Court. Even in her complaint, she had stated about the presence of the Village Administrative Officer and other Revenue Officials at the time of the occurrence.

12. P.W.1 gave a complaint at about 4.00 p.m. It is the case of the prosecution that the respondent was not aware of the occurrence till then. This version of the prosecution case is improbable; the Village Administrative



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Officer and other officials, having witnessed the occurrence, would have certainly informed the Police about the occurrence. There was no necessity for the prosecution to wait for a complaint by P.W.1 who was not an eye witness. However, in the facts of the case, it appears to be an anxiety shown by the Investigating Officer to obtain a complaint from a relative of the deceased and make it appear that it was the first information. This is definitely a lapse on the part of the Investigating Officer. But the question is whether, in the facts of the case, that lapse would affect the prosecution case. We are of the view that the Village Administrative Officer, the Surveyor and the Village Assistant, P.W.4, P.W.5 and P.W.15 respectively, supported the prosecution case. As stated earlier, P.W.9 is another eye witness to the occurrence, has not been discredited by the defence. There is no reason to disbelieve their evidence. The discrepancy pointed out by the defence in the prosecution case does not affect the credibility of the witnesses. It is trite law that lapses in the investigation would not by itself affect the prosecution case, and it would depend on the facts and circumstances of each case. In the instant case, we are inclined to believe the version of the eye witnesses and hold that the prosecution has proved its case beyond reasonable doubt and the minor lapses pointed out by the defence have not affected the



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prosecution case in any manner.

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13. Therefore, we are of the view that the prosecution has established its case beyond reasonable doubt. Accordingly, this Criminal Appeal is dismissed. The Judgment of conviction and sentence imposed upon the appellant/accused in S.C.No.37 of 2019 passed by the learned Sessions, Judge, Fast Track Mahila Court, Krishnagiri, dated 06.08.2021 is confirmed.

(M.S.R.,J.) (S.M.,J.)
05.02.2024

Index : yes

Neutral citation : yes

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To

1. The Sessions, Judge,
Fast Track Mahila Court,
Krishnagiri,
- 2.The Inspector of Police,
Bargur Police Station,
Krishnagiri District.
- 3.The Public Prosecutor,
High Court, Madras

M.S.RAMESH,J.
AND



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dk

Pre-delivery judgment in
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